IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6287 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAIRLIX @ BHAILAL ARLIX CHRISTIAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6287 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 11-03-2004, by which the petitioner is detained under PASA as a

"bootlegger". Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about solitary criminal case registered against the petitioner, which is registered under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering aforesaid case and statements of some witnesses, order of detention is passed against the petitioner, which is under challenge in this petition.

2) Earlier this very petitioner has filed another Special Civil Application No.6737/2004, challenging the same order of detention and this Court has permitted the petitioner to withdraw aforesaid Special Civil Application No.6737/2004, in view of the pendency of present Special Civil Application. Ms.Raval, learned AGP, has requested that the affidavit filed by the detaining authority in the earlier petition being Special Civil Application No.6737/2004, may be taken on record in this petition, as the same detention order was challenged in the earlier petition and therefore, the averments made in the affidavit can be considered in this case also. At the request of learned AGP, affidavit filed in Special Civil Application No.6737/2004 is taken on record of this Special Civil Application.

3) Ms.Mishra, learned advocate for the petitioner has submitted that at the time when the detention order was passed, the petitioner was already in judicial custody and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail and will continue his activity, therefore, subjective satisfaction arrived at by the detaining authority stands vitiated.

4) To substantiate her say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court

> of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

5) Considering the aforesaid judgment and considering the fact that since there is nothing to show as to on what basis the authority has come to the conclusion that the petitioner will be released on bail, especially when no bail application is pending, the order of detention is required to be set aside.

6) On the aforesaid ground, this petition is allowed. The order of detention dated 11-03-2004 is quashed and set aside. The detenu, Fairlix alias Bhailal Arlix Christian is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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